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### Repository Citation

Grant, Janice (1999) "Guardianship Mediation," *Marquette Elder's Advisor*: Vol. 1: Iss. 2, Article 7.  
Available at: <http://scholarship.law.marquette.edu/elders/vol1/iss2/7>

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# Guardianship Mediation

*With extreme age or disability, more people need guardians to make their health care or financial decisions. For some, important decisions are complicated by conflicts among family members, service professionals, and others. Mediation can provide a forum for sorting out these conflicts. This article considers the timing and processes of successful mediation under state and federal laws.*

**By Janice Grant**

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**I**n 1993, more than 500,000 Americans had guardians or were going through guardianship proceedings in over 2,500 courts.<sup>1</sup> Conflicting surveys show that number to be as high as 1.25 million nationwide. In 1995,

approximately 7,866 petitions were filed<sup>2</sup> for temporary and permanent guardianships and conservatorships in Wisconsin courts alone.<sup>3</sup> Only a small number of these guardianship-related court cases are appealed, possibly because the disputes are so personal.<sup>4</sup>

Unfortunately, this means there are few guiding principles to be derived from case law for families and the courts in terms of guardianship issues. Compounding this problem, the need for guardianship services is growing as the population keeps aging. From 1960 to 1994, the number of Americans aged 65 and older increased by a factor of 11 (while the population of those under 65 merely tripled).<sup>5</sup> By the year 2050, there will be an estimated 80 million elderly people.<sup>6</sup> With this increased longevity, the number of people reaching an age where they may not be able to fully provide for their own health care or their own finances almost inevitably will swell. Along with this growing vulnerability, instances of familial conflict, lack of knowledge of options, guardianship appointment problems, and cases of abuse are bound to multiply and could flood court dockets and social workers' calendars.

Under some circumstances, the person whose interests are at stake may not be able to wait for, or participate in, a formal court process. In others, the desire of family members to help their older relatives may be the best option for all. Mediation may provide an answer for many elderly and disabled adults and their families when they are faced with guardianship concerns.

## **The Courts and Guardianship**

The courts are somewhat restricted with respect to what they can do for an individual person in a guardianship hearing. These formal hearings tend

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to be quick and routine. They may not explore the capabilities of the proposed ward or consider any nonguardianship alternatives. The courts' main concerns are to determine the need for a guardian and to name one, not to resolve personal, psychological, or familial conflicts. Court-ordered solutions may include appointing a guardian, appointing a limited guardian, or dismissing the case.

### Mediation and Guardianship

Mediation has been described as "intervention into a dispute or negotiation by an acceptable, impartial, and neutral third party, who has no authoritative decision-making power, to assist disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute."<sup>7</sup>

Until recently, however, no mediation procedures existed specifically for guardianship-related cases, perhaps because the traditional, paternalistic view of guardianship interfered with envisioning the range of issues appropriate for mediation. The most significant matters for mediated discussion include who will serve as guardian or otherwise assist the elderly individual, where the individual will live, and what kinds of assistance are acceptable and sufficient. Many impaired older adults wish most of all to live in familiar surroundings and avoid what they might perceive as the impersonal atmosphere of an institution. Others would choose someone other than the family member seeking appointment as a guardian, possibly a friend or a more compatible member of the extended family. If life is not to be dictated by institutional routine, many other questions arise regarding in-home services, about the sensitive arena of privacy and autonomy versus safety, and concerning good nutrition and cleanliness.

At its most effective, guardianship mediation can lead to avoidance of the stigma of guardianship altogether by substituting voluntary services. Many programs and volunteer agencies can help competent individuals avoid guardianships. Some combination of case managers, food and transportation services, social and recreational facilities, bill-paying services, and legal assistance is available in many communities for those individuals who desire the assistance. Mediation can provide a forum for all the parties involved to come together, express all interests and concerns, and create a plan of action. Adult guardianship mediation allows families to explore, together, what alternatives exist to address

their personal issues and problems, and then assists them in reaching a mutually acceptable and customized solution. Appointment of a guardian occurs *only* if no alternative solution can be reached, because the goal of mediation is to "provide for maximum possible independence and autonomous control over basic life decisions for older persons, while still addressing the need for assistance."<sup>8</sup>

### Mediating the Issues

A neutral, knowledgeable mediator facilitates the mediation session. One mediator duty is to include the older person as much as possible in the mediation process. By allowing all parties and family members involved to express their concerns and offer creative solutions, the mediator nurtures relationships with family and friends. Maintaining close relationships may be imperative to ensuring that elderly people and adults with disabilities receive the most appropriate care. Friends and family members who, during mediation, agree to take on certain caretaking obligations are far more likely to carry them out knowing they had a say in dividing up the responsibilities. Further, the mediator can also help ease the burden on the main caregivers by educating all parties as to what community support services are available and appropriate in each case. All this is accomplished while preserving the most rights and as much autonomy as possible for the person who is the subject of the mediation.

Guardianship issues, ranging from the recommendation that a guardian be appointed to resolving conflicts with a current guardianship appointment, are ripe for mediation because the goal is often to balance the individual's independence with the interests of family members or caregivers.<sup>9</sup> In some instances, impaired persons may not be able to participate in a formal proceeding or articulate their wishes; they may feel threatened by the formal process and therefore afraid to make their wishes clear. Litigation often takes longer and has a greater monetary cost than mediation.<sup>10</sup> Finally, it is estimated that 90 percent of all cases are settled out of court anyway.<sup>11</sup> Trial court judges have the option of ordering alternative dispute resolution, and in nonguardianship cases, mediation has been the most often ordered alternative.<sup>12</sup> Referrals to adult guardianship mediation are likely to occur whenever the option is available and appropriate.

### **The Guardianship Mediation Project**

The Center for Social Gerontology (TCSG)<sup>13</sup> has, since the early 1990s, attempted to reach beyond the limitations of the court guardianship process for alternative methods. With funding from the National Institute for Dispute Resolution, TCSG began the Guardianship Mediation Project.<sup>14</sup>

In 1991, TCSG began with a pilot mediation project in Michigan,<sup>15</sup> and soon it provided training to selected mediators chosen from New Mexico, Illinois, Colorado, and Florida.<sup>16</sup> TCSG found mediation under these circumstances<sup>17</sup> to be a valuable tool in promoting individual autonomy while protecting and even enhancing vital relationships.<sup>18</sup>

Actual mediation sessions to date have dealt primarily with guardianship petitions already filed due to the fact that most referrals have come from guardianship (usually probate) courts. Most of these cases involve differing ideas of how the needs of the individual should be met, how property should be managed, who should be appointed the guardian, where the individual should live, and what medical assistance the individual needs.<sup>19</sup> Approximately one-third of the disputes were the result of a conflict that arose after a guardian had already been appointed.<sup>20</sup> The matters mediated in these cases included naming a successor guardian, determining whether the guardian was distributing money appropriately, and determining whether the guardianship should be limited or terminated. A few cases were mediated before the parties ever went to court. These mainly involved residence, money management, and daily health care.<sup>21</sup>

### **Cases Appropriate for Mediation**

TCSG suggests a number of situations in which mediation might be appropriate. Some of the most common are when a proposed ward does not want a guardian (or, at least not the proposed guardian), or when a proposed ward will accept a guardian having some decision-making authority but does not want to lose all control.<sup>22</sup> Other issues suitable for mediation include disputes among family members or other interested parties over who should be appointed as guardian, or when the guardian's actions (or lack of action) becomes the subject of concern or suspicion.<sup>23</sup>

TCSG pilot programs show that guardianship mediation is most successful when all interested parties are able and willing to participate in the

process; when maximum participation is requested and received from the elderly or disabled individual, including having a representative present if needed; and when the mediator knows about available community services and resources and can explain the eligibility requirements for participation in any such programs.<sup>24</sup>

### **Cases Inappropriate for Mediation**

Sometimes mediation is not the best alternative for a variety of reasons. First, it is essential that all interested parties agree to participate in the mediation session. If one person is not cooperative or is unavailable, it is likely the session will not produce a mutually acceptable outcome, or that it will be the source of later conflict. Similarly, mediation is not appropriate when the elderly or disabled person has an opinion regarding the dispute but is unable to actively participate in the mediation, either personally or through a representative. If an individual is adamant about having a formal hearing or is otherwise uncooperative, mediation cannot produce the desired outcome anyway. However, it may be necessary to begin the mediation to be certain that no agreements can be reached.

Further, if the main issue is distribution of money or goods, the courts may provide a decision that is more acceptable to the individual and his or her family. For many people, an authoritative ruling is preferred over the possible compromises that could result from mediation, particularly in matters of property ownership and control.

### **Mediation Project Process**

Mediation investigators are those who decide which cases would be best suited for the mediation process. An intake checklist created by TCSG for use when receiving and screening a referral suggests the following objectives to investigators before a case is heard:<sup>25</sup>

1. Decide whether mediation is appropriate for the issue(s) at hand.
2. Determine who should be present (interested parties).
3. Choose a mediator(s) to facilitate the session.
4. Set a time and place for the mediation.
5. Find out if special accommodations will be necessary and make arrangements where appropri-

ate (wheelchair access, remote location, unusual time, additional parties present, etc.).

6. Determine if lawyers or other representatives will attend.
7. Assure that everyone has received proper notice.
8. Prepare mediation file (petition, confidentiality agreements, names and addresses, etc.).

A mediator should complete each step of the following mediation process to ensure that the session is as productive and comprehensive as possible:<sup>26</sup>

1. Read or make an opening statement welcoming the parties, establishing the ground rules, and indicating the goals of the session.
2. Hear the concerns of each party and elicit all desired outcomes and possible alternatives, while eliminating unrealistic goals.
3. Help identify issues for individuals and issues objectively fundamental to the elderly person's ability to maximize independence.
4. Lead the discussion as a joint session while exploring the possibility or necessity of individual breakout meetings.
5. Conduct individual sessions, if necessary.
6. Facilitate reaching a reasonable and practical resolution that is personalized for, and mutually acceptable to, all present.

In the words of an early advocate, a successful mediator can "speed the negotiations, reduce the likelihood of miscalculation, and generally help the parties to reach a sounder agreement, an adjustment of their divergent valuations that will produce something like an optimum yield of the gains of reciprocity."<sup>27</sup>

By following the basic steps shown above while interpreting or expanding them as needed, a skilled mediator works toward the ultimate goal of the session, which is to help the participants reach a customized resolution outlining voluntary services that will help avoid a guardianship—while still allowing the elderly or disabled individual to maintain as much autonomy as possible.

### **Results of Mediation**

Below are some examples of agreements reached in adult guardianship mediation sessions conducted in Wisconsin and Michigan.<sup>28</sup>

1. One sibling will be guardian of the estate and agrees to consult with an estate planning attorney and a financial advisor concerning financial management and investment. The other siblings are invited to attend those sessions. The guardian of the estate also agrees to notify the other siblings at least two weeks in advance of any nonemergency expenditures of \$5,000 or more.

2. One sibling agrees to be the guardian of the estate, while two others become guardians of the person—one of which will move in with their mother. The guardian of the estate agrees to maintain a checking account for use by the caretaker for everyday expenses and will replenish it each month to \$1,000. The guardian of the estate will pay regular bills and taxes and schedule respite care. Each sibling will maintain accountings.

3. An elderly person agrees to sign both a power of attorney for specific limited financial purposes and a health care power of attorney. The petitioner agrees to dismiss his or her guardianship petition.

4. Three siblings will each help their mother for one month at a time, on a rotating basis, with bill paying. Their mother will write and sign checks, and the family members will oversee to assure all bills are paid and that calculations are correct. The mother agrees not to give away or lend any money in the next six months, except for regular gifts to church. The petitioner agrees to adjourn the guardianship petition for six months. If then things are going well, the petition will be dismissed. No agreement is filed with the court.

5. The guardian agrees that the ward may move into an independent living apartment. The ward agrees to cooperate with the home health aides who will come into his home. The ward will adjourn his petition to terminate the guardianship for six months at which time, if things are progressing satisfactorily, he will dismiss the petition.

These sessions may have produced resolutions partly because mediation may have been the first real opportunity for adult children to listen and understand their parent's point of view as well as to appreciate the interests and concerns of any other parties involved. Some well-meaning family members and friends are so concerned with the care of their older or disabled loved ones that they become too emotional to discuss things rationally. While mediation allows concerns to be shared and emotions to be addressed, the mediator can control

what might otherwise become an argument and focus instead on resolving the conflicts and putting the needs of the elderly or disabled person before the desires of others.

### Concerns About Mediation

Mediation, like any other resolution method, has its drawbacks and shortcomings. One major drawback is the current limited availability of mediators skilled in guardianship issues. However, as guardianship mediation gains popularity, more trained mediators will seek to acquire specialized knowledge. Across the country, agencies are available to train new mediators in the general principles of mediation, but as yet there are no specific requirements for licensing.<sup>29</sup>

Another drawback is mediation's relatively new appearance as an alternative to the court system. The potential errors and injustices of solutions to complex family problems focusing on care for an elderly or disabled person are traditionally the stuff of guardianship appeals and will contests. Mediated solutions introduce a wider range of possible solutions and, therefore, more possibility for errors that may go unredressed. As increasing numbers of guardianship petitions are filed, courts will refer a large number of them to mediation. Courts can be a difficult forum for family matters, and studies like TCSG's make it possible for alternatives to be developed.

Some critics of mediation see it as "second class justice" that could "deprive clients of legal rights and remedies."<sup>30</sup> The imbalance of power that is sometimes present in family situations where guardianships are proposed is also of great concern in a nonjudicial setting. "If the power is obviously disparate then the unempowered party has little incentive to mediate and much to go to court."<sup>31</sup> While a court may not be able to reach exact justice either, legal arguments may be more discriminating than personal recommendations. Finally, some people think negotiating an agreement can never be a better alternative than having their day in court to receive an authoritative conclusion.

There is some concern regarding whether a lawyer should be a mediator. ABA Model Rules allow a lawyer to assume such a role,<sup>32</sup> but it is imperative that clients understand that mediators do not make decisions or offer advice as legal counsel. Rather, mediators facilitate discussion and offer information regarding available alternatives. By

hiring or seeking the assistance of a lawyer to act as a mediator, participants are not getting the services of a lawyer. Therefore, the lawyer/client confidentiality privileges do not apply, and the mediator/client confidentiality rules are not as clearly defined.<sup>33</sup>

### State Action

Adult guardianship mediation is evolving, and although current state laws do not address particular mediation concerns, a number of states are working to combat the abuses against their elderly citizens that sometimes cause family members to petition for guardianship in the first place.

The Kentucky attorney general established a task force comprised of medical and legislative experts, law enforcement officials, and personal social workers to enforce existing laws preventing fraud and to educate the elderly.<sup>34</sup>

Florida police chiefs and the American Association of Retired Persons co-sponsored a program exclusively for educating the elderly on telemarketing exploitation, called TRIAD.<sup>35</sup>

In Iowa, an additional civil penalty of up to \$5,000 may be imposed for individuals convicted of fraud involving an elderly victim.<sup>36</sup> The fines are held in an Elderly Victims' Fund that is used solely for investigating and prosecuting frauds against elderly victims.<sup>37</sup>

A reporting statute enacted in Colorado in 1991 mandates reporting abuse against the elderly, including financial exploitation.<sup>38</sup>

The North Carolina Association of Black Lawyers' Land Loss Prevention Project and Black Elderly Legal Assistance Support Projects are aimed at protecting against second mortgage scams.<sup>39</sup>

In Wisconsin, Governor Thompson signed an Anti-Fraud Elderly Bill, and a bill passed the Wisconsin legislature allowing judges to impose additional civil penalties of up to \$10,000 on defendants whose conduct knowingly target the elderly, causing specific consequences, including loss or lien on personal residence, loss of principal income, and loss of assets essential to the health of an elderly or disabled victim.<sup>40</sup>

Several states, including Wisconsin, Indiana, and Illinois, have implemented the federal Vulnerable Victim Enhancement that adds time to penal sentences for individuals convicted of fraud against the elderly.<sup>41</sup>

## Federal Laws

On the national level, much action is taking place. A number of federal laws are available to serve as starting points when dealing with problems related to assisting impaired adults that are potential wards.

The Americans with Disabilities Act of 1990 (ADA)<sup>42</sup> prohibits public entities from discriminating or excluding any persons with disabilities.<sup>43</sup> Arguably, no public guardianship or mediation program could deny hearing guardianship issues due to a party's disability. Certainly, the ADA offers some protections for impaired adults seeking housing or employment. The ADA may provide support for their argument to get a mediation order.

The Older Americans Act (OAA) of 1965 was designed to address the needs of older persons living at home. The OAA ensures that community-based programs, including transportation, home-delivered meals, legal assistance, senior center services, and recreation facilities, are available in many communities.<sup>44</sup> This means that through the use of available community service agencies, an individual may acquire the assistance he or she needs without the help of a guardian.

As a practical matter, targeting provisions in the OAA have severely limited the volume of services available to persons above the poverty line. But, at the least, an OAA service program (and state community care programs with parallel service packages) can be reliable sources of care providers for a fee, or may provide referrals to good private providers.

Hospitals and other Medicare and Medicaid provider organizations must, under the Patient Self-Determination Act (PSDA), provide patients with information about their right to create advance directives upon admission to the facility.<sup>45</sup> These organizations also must record any existing directives for every patient. This compelled documentation helps to ensure that the wishes of a patient will be carried out. This record is also helpful in the event the patient has no guardian (or family), or if the patient has a guardian (or family) who is unsure of the wishes of the patient.

The Senior Citizens Against Marketing Scams Act mandates that judges issue restitution orders for anyone found guilty of federal fraud offenses.<sup>46</sup>

Federal Sentencing Guidelines Section 3A1.1 allow additional sentencing enhancements when the crime is against an unusually vulnerable victim; this includes the elderly.<sup>47</sup> Generally, this enhancement is an increase of two levels in the defendant's

sentence if the defendant knew or should have known that the victim was elderly.

## Conclusion

Adult guardianship mediation may be an excellent alternative to the adversary legal system. It can help clients resolve issues that may not be addressed effectively in court. It can also provide resolutions to urgent health care issues that could be heard in court, but would likely take longer to hear than the elderly or disabled adult is able to wait. Additionally, it allows all interested parties a forum in which to have their concerns heard and considered. Siblings and others not normally part of the decision-making process in a formal court setting are able to participate in the mediation session. Thus, the participants have a chance to volunteer for certain responsibilities and, as a result, are more likely to take ownership of their obligations.

Mediation strives to allow elderly and disabled adults to retain as much autonomy and as many rights as possible. This is extremely important as the population ages and medical technologies advance, and disabilities affect each person to differing degrees. It is human nature to want to control all aspects of one's own life, and mediation helps individuals to be in charge as much as possible.

Finally, the need for a guardian implies that some independence will be taken away from an individual. But it is possible to maintain much of that independence while getting a little help from friends and family. Since all interested parties are present at the mediation and may volunteer for various services, familial relationships and friendships are nurtured. Maintaining these relationships while encouraging independence and cooperation, yet still avoiding a guardianship situation, is what a mediator strives to accomplish. These same goals are often key to the well-being of the elderly or disabled adults who find themselves the subjects of guardianship petitions. It is their health and happiness that is the ultimate goal of mediation.

## Endnotes

1. See COMMISSION ON NAT'L PROBATE COURT STANDARDS, NAT'L PROBATE COURT STANDARDS, app. B (National Center for State Courts 1993).

2. See Correspondence from the Coalition of Wisconsin Aging Groups: Elder Law Center (Dec. 9, 1996) (on file with author).
3. In Wisconsin, conservators were ordered without finding incompetence in response to voluntary petitions [see WIS. STAT. § 880.31]. This statute has been largely superseded by Wisconsin Statutes Section 243.07 (durable powers of attorney).
4. See *Update on Guardianship Mediation*, WISCONSIN GUARDIANSHIP SUPPORT CENTER NEWS, Fall 1997, at 12.
5. See *Old and Older*, CENSUS USER NEWS, June 1995, at 21.
6. See *id.*
7. Christopher W. Moore, THE MEDIATION PROCESS 14 (Jossey-Bass 1986).
8. The Center for Social Gerontology, Inc., ADULT GUARDIANSHIP MEDIATION MANUAL III, (Ann Arbor, MI 1998).
9. See Alison Barnes, *Commentary: The More Things Change: Principles and Practices of Reformed Guardianship*, in OLDER ADULTS' DECISION MAKING AND THE LAW (Smyer, Kapp & Schaie, eds., Springer Publishing Co. 1996).
10. See WISCONSIN GUARDIANSHIP SUPPORT CENTER NEWS, *supra* note 4, at 12 (quoting Wisconsin Chief Justice Shirley Abrahamson).
11. See Kevin Gibson, *Alternative Dispute Resolution and Health Care*, in THE HEALTH LAW DESK REFERENCE, app. (Alison M. Barnes, ed., A.L.I./A.B.A. (1999) (citing Frank Sander, *Alternative Methods of Dispute Resolution: An Overview*, 37 FLA L. REV. 1 (1985)).
12. See WISCONSIN GUARDIANSHIP SUPPORT CENTER NEWS, *supra* note 4, at 12; see also WIS. STAT. § 802.12.
13. The Center for Social Gerontology is located in Ann Arbor, Michigan. TCSG is dedicated to serving the elderly and looking for ways to allow the aged to retain as much independence as possible.
14. See Lauren Barritt Lisi & Anne M. Burns, *Mediation in Guardianship Cases: A Promising Alliance*, 26 CLEARINGHOUSE REVIEW 644, n.6 (Oct. 1992).
15. See *generally* The Center for Social Gerontology, STATE LEADERSHIP IN ADULT GUARDIANSHIP MEDIATION, Application Materials (Ann Arbor, MI 1997).
16. Wisconsin became the sixth state invited by TCSG to pilot a program in adult guardianship mediation [see *generally* WISCONSIN GUARDIANSHIP SUPPORT CENTER NEWS 7, Summer 1997, at n.1].
17. See The Center for Social Gerontology, *supra* note 15, at 2.
18. For specific training sites, see Kevin Gibson, *supra* note 11; see also on the Internet, Mediation Information Resource Center <<http://www.mediate.com>>.
19. See WISCONSIN GUARDIANSHIP SUPPORT CENTER NEWS, Summer 1997, at 3.
20. See *id.*
21. See *id.*
22. See *id.*
23. See *id.*
24. See *id.*
25. For basic process see The Center for Social Gerontology, Inc., ADULT GUARDIANSHIP MEDIATION MANUAL, app. 1, B (Ann Arbor, MI 1998).
26. *Id.*, at app. 1, C.
27. Leon Fuller, *Mediation: Its Forms and Functions* 44 S. CAL. L. REV. 305, 325 (1971).
28. These agreements excerpted from May/June 1998 issue of *The Exchange*, a newsletter from the TCSG dedicated to the Adult Guardianship Mediation Project.
29. For training sites in your area and selected ADR practitioners and organizations, see Kevin Gibson, *supra* note 11.

30. *Id.* (quoting Owen M. Fiss, *Against Settlement* 93 YALE L.J.1073 (May 1984); and Ury, Brett & Goldberg, GETTING DISPUTES RESOLVED (Jossey-Bass 1988)).
31. See Kevin Gibson, *supra* note 11.
32. See generally A.B.A. Model Rule 5.7 (1994); see also James M. Assey, Jr., *Mum's the Word on Mediation: Confidentiality and Snyder-Falkinham v. Stockburger*, 9 GEO. J. LEGAL ETHICS 991 (Spring 1996) (discussing confidentiality in a mediation setting); see also Joseph E. Cassondra, *The Scope of Mediator Immunity: When Mediators Can Invoke Absolute Immunity*, 12 OHIO ST. J. ON DISP. RESOL. 629 (1997) (discussing mediator immunity).
33. See Kevin Gibson, *supra* note 11 (discussing that the code of professional conduct will apply to any lawyer providing services that are available by a non-lawyer and are not unauthorized practices of law).
34. See Richard A. Starnes, *Consumer Fraud and the Elderly: The Need for Uniform System of Enforcement and Increased Civil and Criminal Penalties*, 4 ELDER L.J. 201 (Spring 1996).
35. See *id.*
36. See *id.*
37. See *id.*
38. See generally COLO. REV. STAT. § 26-3.1.
39. See Paulette Brown, *African American Elderly: Targets for Fraud*, NAT'L B. ASS'N MAG., Jan./Feb. 1994.
40. See Terje Langeland, *Thompson Signs Anti-Fraud Bill*, CAPITAL TIMES, June 5, 1996; see also Bob Richards, *Criminals Who Target Elderly Get Extra Slap*, CAPITAL TIMES, Sept. 5, 1996.
41. See *United States v. Jury*, 53 F.3d 334 (7th Cir. 1995); *United States v. Sutherland*, 955 F.2d 25 (7th Cir. 1992); *United States v. Stewart*, 33 F.3d 764 (7th Cir. 1994); and *State v. Stepniewski*, 314 N.W.2d 98 (Wis. 1982).
42. 42 U.S.C. § 12101 *et seq.*
43. 42 U.S.C. § 12313(2).
44. 42 U.S.C. § 3001 *et seq.*
45. 42 U.S.C. §§ 1395cc(f), 1396a(w).
46. See Richard A. Starnes, *supra* note 34. Note: Since this act is not available on the state level, a private civil action for fraud must be filed.
47. See John Garry, *Why Me: Application and Misapplication of § 3A1.1, The Vulnerable Victim Enhancement*, 79 CORNELL L. R. 143 (Nov. 1993); see also Ralph V. Seep, *Annotation: What Constitutes Unusually Vulnerable Victim Under Sentencing Guideline § 3A1.1*, 114 A.L.R. FED. 355 (1993).